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efile@markslg.comAttorneys for Interstate Plumbing
& Air Conditioning, LLC**UNITED STATES DISTRICT COURT****DISTRICT OF NEVADA**

FULTON PARK UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
community association, individually and in its
representative capacity; LEON TURNER, an
individual, individually and in his representative
capacity; MICHAEL CROWDER, an
individual, individually and in his representative
capacity; TRICIA CROWDER, an individual,
individually and in her representative capacity;
RAINA MUSSER, an individual, individually
and in her representative capacity; DOE HOME-
OWNER/CONDOMINIUM/COMMUNITY
ASSOCIATIONS 1-10,000; DOE
HOMEOWNERS 1 – 250,000,

Plaintiffs,

vs.

PN II, INC. d/b/a PULTE HOMES OF
NEVADA, a Nevada corporation; D.R.
HORTON, INC., a Delaware corporation; ROE
INDIVIDUALS 1-10,000, individuals; ROE
BUSINESS or GOVERNMENTAL ENTITIES
1-10,000, including Nevada corporations; ROE
INDIVIDUALS 10,001-20,000 and ROE
BUSINESS or GOVERNMENTAL ENTITIES
10,001-20,000, including Nevada corporations,

Defendants.

CASE NO. 2:11-cv-00783-NDF-MLC

Consolidated with: 2:08-cv-01223; 2:11-cv-
00425; 2:11-cv-00812; 2:11-cv-00830; 2:11-cv-
01498; 2:11-cv-01875; 2:12-cv-00002; 2:12-cv-
00206; 2:12-cv-00207

(ELECTRONIC FILING CASE)

**JOINT MOTION TO STRIKE FUGITIVE
PLEADING PLAINTIFFS' AMENDED
COMPLAINT AGAINST NON-UPONOR
DEFENDANTS [DOC. 87]**

JOINT MOTION TO STRIKE FUGITIVE PLEADING PLAINTIFFS' AMENDED COMPLAINT AGAINST NON-UPONOR DEFENDANTS [DOC. 87]

Third-Party Defendants Interstate Plumbing & Air Conditioning, LLC and RCR Plumbing & Mechanical, Inc., submit this Joint Motion to Strike Fugitive Pleading Plaintiffs' Amended Complaint Against Non-Uponor Defendants. [Doc. 87] This Brief is made and based upon the pleadings and papers on file herein, the Points and Authorities submitted herewith, and such argument as the Court may entertain at the time of the hearing of this matter.

Points and Authorities

Pursuant to this Court's Memorandum Opinion and Order Containing Findings of Fact and Conclusions of Law Granting in Part and Denying in Part Plaintiffs' Motion to Certify Class in the lead case of *Hartmann v. Uponor, Inc.*, Case No. 08-cv-1223, this Court ordered as follows:

Plaintiffs' Amended Motion to Certify Class [Doc. No. 691] is DENIED as to all non-Uponor Defendants. Therefore, all claims brought by homeowner Plaintiffs, seeking to represent others similarly situated, against all non-Uponor Defendants are DISMISSED WITH PREJUDICE. Further, all claims brought by common interest community Plaintiffs owning community property, seeking to represent other common interest communities similarly situated, against all non-Uponor Defendants are DISMISSED WITH PREJUDICE. As against all non-Uponor Defendants, all non-class claims brought by homeowner Plaintiffs in their individual capacities and all non-class claims alleging common constructional defects within a single development shall, for case management purposes only, be adjudicated in a new lead case, *Fulton Park v. PN II*, 11-cv-783-NDF. Within thirty (30) days from the date of this order, Plaintiffs alleging such claims against non-Uponor Defendants shall file an Amended Complaint in both this *Hartmann* case (to facilitate electronic notice only) and the lead case, *Fulton Park v. PN II*, 11-cv-783. Neither new parties nor new claims may be added without leave of Court. All subsequent pleadings relating to such claims involving non-Uponor Defendants shall then only be filed in the lead case, *Fulton Park v. PN II*, 11-cv-783.

See *Hartmann v. Uponor, Inc.*, Case No. 08-cv-1223. [Doc. 1206 at p. 63] The Court's Order on Plaintiffs' Motion for Clarification did not alter or modify the above Order requiring Plaintiffs

1 to file an Amended Complaint in the *Fulton Park* matter. See *Hartmann v. Uponor, Inc.*, Case
2 No. 08-cv-1223. [Doc. 1223]

3 On January 17, 2014, Plaintiffs filed a Motion for Leave to File an Amended
4 Consolidated Complaint against non-Uponor Defendants. [Doc. 86] While the Motion for Leave
5 remains pending, Plaintiffs moved forward and filed their Amended Consolidated Complaint on
6 January 23, 2014. [Doc. 87] The Amended Consolidated Complaint against the non-Uponor
7 Defendants add two new plaintiffs – Fiesta Park Homeowners' Association and Anthem
8 Highlands Community Association and adds new class action claims, which were dismissed with
9 this Court's above-referenced Order.

10 The Court's Order clearly limits the Amended Consolidated Complaint - Plaintiffs may
11 not include new parties or new claims. While Defendants recognize that Plaintiffs may disagree
12 concerning their ability to refile class action allegations, there is no disagreement as to the
13 limitations placed on Plaintiffs for adding new parties. Plaintiffs certainly understand this as
14 they have filed a Motion for Leave requesting *permission* to file the Amended Consolidated
15 Complaint which adds new parties. Despite the filing of the Motion seeking leave to file the
16 Amended Complaint, and before this Court could rule on the Motion seeking leave, Plaintiffs
17 proceeded with filing the Amended Complaint.

18 The Amended Consolidated Complaint is a fugitive document clearly in violation of this
19 Court's Order and inconsistent with the pending Motion for Leave. Defendants request that this
20 Court enter the attached Order and immediately strike the same. Defendants are unfairly
21 prejudiced by this filing as they now have to prepare a response to a pleading which has not yet
22 been approved by this Court. Regardless of this Court's ultimate decision on the Motion for
23 Leave to file an Amended Consolidated Complaint, an operative pleading will need to be filed
24 and Defendants would then have to re-file responsive pleadings, resulting in unnecessary time,
25 expense and filings for the Court.

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1 Defendants respectfully request a decision on this Motion to Strike by February 4, 2014,
2 which is two days before the responsive pleading deadline of February 6, 2014. A copy of the
3 proposed Order on Defendants' Motion to Strike Plaintiffs' Amended Complaint against Non-
4 Uponor Defendants [Doc. 87] is attached hereto as Exhibit "1".

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6
7 Dated: January 31, 2014

THE MARKS LAW GROUP, LLP

8 By: /s/ Sharon S. Parker
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12 Attorneys for INTERSTATE PLUMBING &
AIR CONDITIONING, LLC

13 Dated: January 31, 2014

HANSEN RASMUSSEN, LLC

14 By: /s/ R. Scott Rasmussen
15 R. Scott Rasmussen, Esq.
Nevada Bar No. 6100
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18 Attorneys for Third-Party Defendant
RCR PLUMBING AND MECHANICAL,
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20 Dated: January 31, 2014

HELM & ASSOCIATES

21 By: /s/ Kelvin Helm
22 Kelvin Helm, Esq.
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Las Vegas, Nevada 89102
24 Co-Attorneys for CEDCO, INC.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 31, 2014, the **JOINT MOTION TO STRIKE FUGITIVE PLEADING PLAINTIFFS' AMENDED COMPLAINT AGAINST NON-UPONOR DEFENDANTS [DOC. 87]** was served on all parties or persons requesting notice via the United State District Court CM/ECF system.

An Employee of THE MARKS LAW GROUP, LLP

EXHIBIT “1”

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FULTON PARK UNIT OWNERS' ASSOCIATION, a Nevada non-profit community association, individually and in its representative capacity; LEON TURNER, an individual, individually and in his representative capacity; MICHAEL CROWDER, an individual, individually and in his representative capacity; TRICIA CROWDER, an individual, individually and in her representative capacity; RAINA MUSSER, an individual, individually and in her representative capacity; DOE HOMEOWNER/CONDOMINIUM/COMMUNITY ASSOCIATIONS 1-10,000; DOE HOMEOWNERS 1 - 250,000,

Plaintiffs,

vs.

PN II, INC. d/b/a PULTE HOMES OF NEVADA, a Nevada corporation; D.R. HORTON, INC., a Delaware corporation; ROE INDIVIDUALS 1-10,000, individuals; ROE BUSINESS or GOVERNMENTAL ENTITIES 1-10,000, including Nevada corporations; ROE INDIVIDUALS 10,001-20,000 and ROE BUSINESS or GOVERNMENTAL ENTITIES 10,001-20,000, including Nevada corporations,

Defendants.

CASE NO. 2:11-cv-00783-NDF-MLC

Consolidated with: 2:08-cv-01223; 2:11-cv-00425; 2:11-cv-00812; 2:11-cv-00830; 2:11-cv-01498; 2:11-cv-01875; 2:12-cv-00002; 2:12-cv-00206; 2:12-cv-00207

(ELECTRONIC FILING CASE)

**ORDER ON DEFENDANTS' MOTION TO
STRIKE PLAINTIFFS' AMENDED
COMPLAINT AGAINST NON-UPONOR
DEFENDANTS [DOC. 87]**

ORDER ON DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' AMENDED COMPLAINT AGAINST NON-UPONOR DEFENDANTS [DOC. 87]

This matter is before the Court on Defendants Interstate Plumbing & Air Conditioning, LLC's and RCR Plumbing & Mechanical, Inc.'s Joint Motion to Strike Fugitive Pleading, specifically Plaintiffs' Amended Complaint Against Non-Uponor Defendants. [Doc. 87] Specifically, Defendants ask the Court to strike Plaintiffs' Amended Consolidated Complaint filed on January 23, 2014, which was filed by Plaintiffs in advance of Plaintiffs' Motion for

1 Leave to File an Amended Consolidated Complaint being ruled upon. The Amended
2 Consolidated Complaint contains new parties and new claims. [Doc. 87]

3 The Court agrees with moving Defendants that the inclusion of new parties and new
4 claims in the Amended Consolidated Complaint is in direct contravention to this Court's Order
5 in the lead case of *Hartmann v. Uponor, Inc.*, Case No. 08-cv-1223. [Doc. 1206], which directed
6 Plaintiffs to seek leave of Court prior to adding new parties and claims. The fugitive pleading
7 further prejudices the Defendants and results in unnecessary filings and expenses.
8

9 The Court hereby ORDERS Plaintiffs' Amended Complaint Against Non-Uponor
10 Defendants [Doc. 87] be stricken.

11 Dated: _____

12 By: _____
13 NANCY D. FREUDENTHAL
14 CHIEF UNITED STATES DISTRICT COURT

15 Submitted by:

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